

## FEDERAL RULES OF APPELLATE PROCEDURE

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required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:

- (1) a table of contents, with page references;
  - (2) a table of authorities — cases (alphabetically arranged), statutes and other authorities — with references to the pages of the brief where they are cited;
  - (3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;
  - (4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and
  - (5) a certificate of compliance, if required by Rule 32(a)(7).
- (d) **Length.** Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.
- (e) **Time for Filing.** An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.
- (f) **Reply Brief.** Except by the court's permission, an amicus curiae may not file a reply brief.
- (g) **Oral Argument.** An amicus curiae may participate in oral argument only with the court's permission.

### ***Practice Note***

An amicus curiae must file an entry of appearance. See Federal Circuit Rule 47.3, and Appendix of Federal Circuit Forms, Form 5.

#### **Rule 30. Appendix to the Briefs**

##### **(a) Appellant's Responsibility.**

- (1) **Contents of the Appendix.** The appellant must prepare and file an appendix to the briefs containing:
  - (A) the relevant docket entries in the proceeding below;

#### **Rule 30. Appendix to the Briefs**

##### **(a) Purpose; Content of Appendix; Time for Filing; Number of Copies; Cover; Service.**

- (1) **Purpose.** The purpose of this rule is to limit the size of the appendix of documentary materials that is printed and filed with the court. The rule also authorizes a supplementary video recording media appendix under some circumstances.

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- (B) the relevant portions of the pleadings, charge, findings, or opinion;
- (C) the judgment, order, or decision in question; and
- ~~(D) other parts of the record to which the parties wish to direct the court's attention.~~

(2) **Excluded Material.** ~~Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.~~

(3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file ~~10~~ copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

**(b) All Parties' Responsibilities.**

~~(1) **Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.~~

(2) **Costs of Appendix.** Unless the parties agree otherwise, the appellant must pay the cost of the appendix. ~~If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts.~~ The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against

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**(2) Contents; Indiscriminate Referencing to Blocks of the Record Prohibited.**

(A) In addition to the matters required by Federal Rule of Appellate Procedure 30(a)(1)(A), (B), and (C), the appendix must include:

- (i) the entire docket sheet from the proceedings below;
- (ii) in an appeal from a jury case, the judge's charge, the jury's verdict, and the jury's responses to interrogatories;
- (iii) in an appeal involving a patent, the patent in suit in its entirety. The patent in suit may also be included as an addendum to appellant's initial brief. Any other patents included in an appendix must be included in their entirety; and
- (iv) any nonprecedential opinion or order cited in accordance with Federal Circuit Rule 47.6(b).

(B) Parts of the record authorized by Federal Rule of Appellate Procedure 30(a)(1)(D) must not be included in the appendix unless they are actually referenced in the briefs, but the parties are encouraged to include in the appendix sufficient surrounding transcript pages to provide context for a referenced transcript excerpt.

(C) Indiscriminate referencing in briefs to blocks of record pages or inclusion of unnecessary pages in the appendix is prohibited.

(D) If the appellant considers that parts of the record have been referenced in violation of this rule, the appellant may so advise the appellee and the appellee must advance the costs of including those parts in the appendix.

(E) The following must not be included in the appendix except by leave of the court, and any motion for leave must state the number of pages requested to be included:

- (i) briefs and memoranda in their entirety (except as otherwise provided in Federal Circuit Rule 30);
- (ii) notices;
- (iii) subpoenas — except where the enforcement or validity of a subpoena is at issue;
- (iv) summonses - except in appeals from the Court of International Trade;
- (v) motions to extend time;

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attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) **Deferred Appendix.**

(1) **Deferral Until After Briefs Are Filed.** The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed ~~and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.~~

(2) **References to the Record.**

(A) ~~If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.~~

(B) ~~A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.~~

(d) **Format of the Appendix.** The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. ~~When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.~~

(e) **Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies

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(vi) certificate of service; or

(vii) jury lists.

(F) Nothing in this Federal Circuit Rule 30 prohibits from designation and inclusion in an appendix:

(i) an examiner's answer in an ex parte patent case;

(ii) a trademark examining attorney's appeal brief in an ex parte trademark case; or

(iii) the briefs and memoranda in their entirety in a case where the only issue is the propriety of summary judgment.

(3) **Additional Mandatory Appendix Items in Patent and Trademark Office Appeals.** In an appeal from the Patent and Trademark Office, unless the parties mutually agree otherwise, the appendix must include:

(A) a copy of all rejected claims in an ex parte patent appeal;

(B) a copy of all counts in a patent interference appeal; or

(C) a copy of the trademark sought to be registered or cancelled and a copy of any registration relied on to refuse or oppose registration or to seek cancellation of a registered mark in an ex parte or an inter partes trademark appeal.

(4) **Time for Filing.** The appellant must serve and file an appendix within 7 days after the last reply brief is served and filed. When there is no cross-appeal, if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief. In a cross-appeal, if the cross-appellant does not file a reply brief, the appendix must be served and filed within 7 days after the time for filing the cross-appellant's reply brief has expired

(5) **Number of Copies.** Twelve copies of the appendix must be filed with the court.

(6) **Multi-Volume Appendix: Covers and Page Numbers.** A multivolume appendix must have a volume number in roman numerals and the pages included in the volume listed at the top of the cover of each volume (e.g., Volume II, Pages 542 to 813).

(7) **Service.** Two copies of the appendix must be served on counsel for each party separately represented. One copy must be served on each pro se party.

(8) **Consequence of Failing to File an Appendix.** If the appellant fails to file an appendix, the clerk is authorized to dismiss the case.

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must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

- (f) **Appeal on the Original Record Without an Appendix.** The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

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**(b) Determination of Contents of Appendix; Designation of Materials; Extension of Time.**

- (1) The parties are encouraged to agree on the contents of an appendix that will comply with this Federal Circuit Rule 30.
- (2) In the absence of an agreement, the appellant must, within 10 days after docketing in an appeal from a court or after service of the certified list or index in a petition for review or appeal from an agency, serve on the appellee or cross-appellant a designation of materials from which the appendix will be prepared and a statement of the issues to be presented for review. The appellee or cross-appellant may, within 10 days after receiving the designation, serve on the appellant a counterdesignation of additional parts to be included in the appendix.
- (3) A designation or counterdesignation must not be filed with the court.

**(4) Table of Pages; Compilation.**

- (A) Within 10 days after the parties have designated the material for the appendix, the appellant must assign consecutive page numbers to the designated material and serve on all parties a table reflecting the page numbers of each item designated.
  - (B) If not prohibited in an outstanding protective order, instead of the table the appellant may - at the appellant's option - serve on the parties one copy of a physical compilation of the designated material with the assigned page numbers shown. This copy may be in micrographic format.
  - (C) The first page numbers in the designated material must be assigned to the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it.
  - (D) The table of page numbers or the physical compilation of the designated material, whichever is used, must not be filed with the court. If all designated material comprises no more than 100 pages, Federal Circuit Rule 30(d) applies.
- (5) **Extension of Time Limits.** The time limits for designating, counterdesignating, and compiling the table may be extended by agreement of the parties without seeking leave of the court, as long as an extension of the time is not required for filing appellant's brief. But if a transcript of the proceed-

ings is required before the material can be designated and if the transcript has been ordered but not completed within the time prescribed by this rule, the appellant must move for an extension of time within which to designate the material. An affidavit explaining in detail what has been done to expedite transcription of the trial proceedings must be attached to the motion.

- (6) **Preparation of Appendix.** The appellant must prepare the appendix to be filed with the court from the designated material by selecting from that material only: items required by these rules; and pages specifically referred to in the briefs of the parties. Pages of the designated material not referenced in the briefs - other than items required by these rules - must be omitted from the appendix filed with the court.

**(c) Format of Appendix; Pagination.**

- (1) **Arrangement of Appendix.** Federal Rule of Appellate Procedure 30(d) governs the arrangement of the appendix, except the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it must be placed first in the appendix. (See Federal Circuit Rule 28(a)(12) for a duplicative requirement of the appellant's or petitioner's initial brief.)
- (2) **Pagination.** The page numbers used in the appendix must be the page numbers assigned by the appellant or petitioner to the designated material in accordance with Federal Circuit Rule 30(b). The page number must appear centered in the bottom margin of each page in the appendix. Other pagination marks must be redacted if necessary to avoid confusion. The materials in the appendix must be in numerical order according to the page numbers the appellant assigned to the designated materials. Omission of pages need not be noted, e.g., page 102 may be followed by page 230 without stating that pages 103-229 are not reproduced in the appendix. References in the briefs must be only to the page numbers of the appendix.
- (3) **Printing.** Pages in an appendix - even when filing a combined brief and appendix - may be printed on both sides. To the extent possible, the court encourages this.

**(d) Combined Brief and Appendix.**

- (1) When a brief and appendix are combined, the cover must so indicate.

(2) If all designated material comprises no more than 100 pages, all of it may be included in the appendix, in which case it may be bound together with the appellant's or petitioner's initial brief and the brief must be filed as provided in Federal Circuit Rule 31(a).

**(e) Appendix in a Pro Se Case.** If an appellant appearing pro se files an inadequate appendix, the appellee may file with its brief an appendix containing material permitted by Federal Circuit Rule 30(a)(2).

**(f) Separate or Supplemental Appendix.** If the appellant has failed to participate in determining the contents of an appendix or has filed an inadequate appendix, the United States or an officer or agency of the United States, as the appellee, may file a separate or supplemental appendix containing material permitted by Federal Circuit Rule 30(a)(2). The cover must be red. If the separate or supplemental appendix contains no more than 100 pages, it may be bound together with the appellee's initial brief. Except as provided in Federal Circuit Rule 30(e) and (f), no party may file a separate or supplemental appendix without leave of the court.

**(g) Costs.** The costs of the table of page numbers or the copy of the physical compilation of the designated material authorized in Federal Circuit Rule 30(b)(4) and of the appendix, including the separate segments authorized in Federal Circuit Rule 30(h), may be assessed as provided in Federal Rule of Appellate Procedure 30(b)(2).

**(h) Appendices Containing Material Subject to a Protective Order.**

(1) **Two Sets of Appendices.** If a party refers in appendices to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of appendices must be filed.

(A) **Confidential Set; Labeling; Number of Copies.** One set of appendices, consisting of 12 copies of the complete appendix, must be labeled "confidential" and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., "CONFIDENTIAL UNTIL [DATE]," or "CONFIDENTIAL DURING JUDICIAL REVIEW." The confidential appendix must include at the beginning (i.e., in front of the judgment or order appealed from) pertinent excerpts of

any statutes imposing confidentiality or the entirety of any judicial or administrative protective order. Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) **Nonconfidential Set; Labeling; Number of Copies.** The second set of appendices, consisting of the original and three copies from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The introductory paragraph of the nonconfidential motion or response must describe the general nature of the confidential material that has been deleted.

(2) **Service.** Each party to the appeal must be served two copies of the nonconfidential appendices and, when permitted by the applicable protective order, two copies of the confidential appendices.

(3) **Availability to the Public.** The confidential appendices will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential appendices (except those protected by statute) should not be made available to the public.

(i) **Appendix to Informal Brief.** The appendix to an informal brief must contain the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit System Protection Board case.

(j) **Supplementary Video Recording Media Appendix.** When the record on appeal or review has been perpetuated in whole or in part on video recording media in accordance with the rules of the court or agency, those video recording media portions of the record that would properly be included in the appendix if they were in documentary form may be included in a supplementary video recording media appendix. Four copies must be filed.

## ***Practice Notes***

**Filing Page Proof Copies Prohibited; Notice of New References in Cross-Appellee's Reply Brief.** Preparing the appendix requires extensive cooperation between the parties. Federal Circuit Rule 30, unlike Federal rule of Appellate Procedure 30, does not permit filing page proof copies of briefs. An appendix prepared without careful attention to Federal Circuit Rule 30 may be rejected when submitted and may result in dismissal. To expedite preparing the joint appendix, a cross-appellant will notify the appellant, promptly on being served appellant's reply brief, whether the cross-appellant will file a reply brief and, if so, whether it will refer to pages not referenced in the briefs already, listing any such pages.

**Dispensing with the Appendix.** A motion to dispense with the appendix will be granted only in extraordinary circumstances.

**Briefs and Memoranda.** Briefs and memoranda presented to the trial court or agency may not ordinarily be included in the appendix, but individual pages may be included when it is necessary to refer to them in the appellate briefs.

**Table of Contents or Index.** Parties are encouraged to include a table or contents or index in each volume of the appendix.

### **Rule 31. Serving and Filing Briefs**

#### **(a) Time to Serve and File a Brief.**

- (1) The appellant must serve and file a brief ~~within 40 days after the record is filed~~. The appellee must serve and file a brief ~~within 30 days~~ after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

- (2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

**(b) Number of Copies.** ~~Twenty-five~~ copies of each brief must be filed with the clerk and 2 copies must be served on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

**(c) Consequence of Failure to File.** If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

### **Rule 31. Serving and Filing Briefs**

#### **(a) Time for Service and Filing.**

##### **(1) Brief of Appellant or Petitioner.**

- (A) In an appeal from a court, the appellant must serve and file its initial brief within 60 days after docketing. Docketing a cross-appeal does not affect the time for serving and filing the appellant's initial brief.
- (B) In an appeal from an agency, the appellant must serve and file its initial brief within 60 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c) or within 60 days after docketing, whichever is later.
- (C) When two or more persons are permitted to proceed as a single appellant, the initial brief must be served and filed no later than the latest date on which the initial brief of any of these persons is due.

**(2) Brief of Appellee or Cross-Appellant.** The appellee or cross-appellant must serve and file its initial brief within 40 days after appellant's brief is served.

##### **(3) Cross-Appeal.** In a cross-appeal:

- (A) the appellant must serve and file its reply brief within 40 days after cross-appellant's brief is served; and
- (B) the cross-appellant must serve and file its reply brief within 14 days after appellant's reply brief is served.

**(4) Single Brief Responding to Multiple Parties.** A single brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of these briefs or,